

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3791 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

D S VASAVDA & A K SHAH

Versus

H R PATANKAR CHAIRMAN

Appearance:

MR DS VASAVDA Petitioner No.1 present in person.

MR VIMAL PATEL for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/09/1999

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioner No.2, a Deputy Engineer of the respondents completed nine years of services in the cadre concerned on 23rd January, 1981. His case was considered for giving him the benefit of higher pay scale but under the memo dated 8-9-1981, he was informed that he was not found suitable for grant of benefit of next higher grade

under GSO No. 253. Again his case was considered and under the memo dated 24-6-1982, he was informed that he was not found suitable for grant of next higher grade under GSO No.253. Hence, this special civil application before this court.

3. Learned counsel for the respondents does not dispute that only adversity as per the Board's record in the service record of the petitioner No.2 is the order dated 19th August, 1982, which has been passed after holding a departmental inquiry against the petitioner No.2. He submitted that because of this order, on both the aforesaid occasions, the petitioner No.2 was not given the benefit of higher grade under the GSO No.253. The order dated 19th August, 1982, reads as under:

CONFIDENTIAL No.EG/VI/DA/LKA/7279

Gujarat Electricity Board
Vidyut Bhavan, Race Course
Baroda (Pin Code 390007)
Date: 19th August, 1982

ORDER

Sub: Departmental inquiry against Shri L.K. Asnani,
DE, Anjar.

Read:- 1) Charge Sheet No. EG/VI/DA/LKA/2135 dated 1.8.78.
2) Reply dtd. 2.7.79 given by Shri L.K.Asnani, DE.
3) Show Cause Notice No.EG/VI/DA/LDA/6837 dated 10.5.82.
4) Reply dtd. 20.5.92. given by Shri L.K. Asnani, received through EE (O&M), Anjar, under letter No.AOM/Est/Disc. Action/82/7382 dated 12.7.82.
5) Papers of Inquiry.

After carefully going through the papers of inquiry and the replies at (2) and (4) above, given by Shri L.K. Asnani, Dy. Engineer, I hold that he was not careful and prompt in maintenance of store records. I, therefore, pass following orders:-

"Shri L.K. Asnani, Dy. Engineer, is strictly warned for the above mentioned lapse on his part.".

sd/-
Chief Engineer (P&P)

4. Under this order, the disciplinary authority has only ordered to warn the petitioner for the lapse on his part. It is true that this order has been passed ultimately in the departmental inquiry but he was not given any penalty.

5. Learned counsel for the petitioner submits that warning is not a penalty.

6. Repeatedly, the court has asked to the counsel for the respondents but he has failed to show any Standing Order or any Regulation of the Board under which warning is stated to be a penalty.

7. This is not an adversity in the service record and denial of benefit of higher grade to the petitioner No.2 is illegal.

8. In the result, this petition succeeds and the respondents are directed to consider the case of the petitioner No. 2 for grant of benefits of higher grade as per GSO No.253 with reference to date 23rd January, 1981 after excluding the order dated 19th August, 1982. In case, he is found suitable for the benefit of higher grade then he should be given all the consequential benefits flowing therefrom w.e.f. 23rd January, 1981. This exercise has to be undertaken and completed within a period of two months from the date of receipt of writ of this order and the consequential benefits which are found to be given to the petitioner No.2 on he being adjudged suitable for higher grade benefits should be given to him within a period of two months next. Compliance of this order be reported to this court. Rule is made absolute accordingly.

zgs/-